

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Application of
Northern States Power Company d/b/a
Xcel Energy for Certificates of Need for
Four Large High Voltage Transmission
Line Projects in Southwestern Minnesota

FIFTH PREHEARING ORDER

Xcel Energy filed a Motion and Memorandum to Limit the Scope of Evidence at Hearing on April 11, 2002. Memoranda in Opposition to Xcel's Motion were filed by Laura A. and John C. Reinhardt, the Environmental Quality Board, North American Water Office, Sierra Club, Public Intervenors Network and the Department of Commerce. Appearances on behalf of each party are on file.

IT IS HEREBY ORDERED:

Xcel's Motion to Limit the Scope of Evidence at Hearing is DENIED.

Dated this 30th day of April, 2002.

BEVERLY JONES HEYDINGER
Administrative Law Judge

MEMORANDUM

Xcel has raised many good points concerning the appropriate scope of this hearing, and the authority of the Public Utilities Commission. However, it has too narrowly characterized the matters to be resolved. This is a preliminary ruling and does not preclude any party from objecting to evidence at the hearing as it is offered.

Eminent Domain.

Xcel is correct that the administrative law judge does not have the authority to make decisions concerning a public utility's exercise of eminent domain. Minnesota Statutes Chapter 117 and 300 control that process. However, the certificate of need process determines whether a high voltage transmission line is needed. If the certificate of need is granted, it is likely to be determinative of the public purpose for the project.^[1] In general terms, the PUC decides if a transmission line is necessary to meet the State's utility needs, the EQB determines the appropriate route, and eminent domain proceedings determine if a specific piece of property must be taken in order to construct the approved line along the approved route. Thus, as evidence is offered in this

proceeding, it will be reviewed from the perspective of the need for transmission lines, and not the need for specific property.

However, if building a transmission line requires the exercise of eminent domain, that may “have an effect on the socioeconomic environment compared to other options.”^[2] It is also relevant to weighing the option of no facility or delayed construction. The Department of Commerce also points out that eminent domain authority may have an effect on the costs of the proposed transmission lines and is relevant to determining the costs of reasonable alternatives.^[3]

The Reinhardtts point out that this approach may place an individual landowner at a disadvantage because the “public purpose” for which an individual’s land may be taken is largely determined outside of the eminent domain proceeding. However, the public has the opportunity to challenge the need for the transmission line. That “need” is determined based on the statutory criteria that affect the residents of the state as a whole, with due regard for the possibility that private property may be taken to carry out the construction and operation of any lines that are needed.

Landowner Notice.

It is necessary to determine what notice was actually given in order to assure that the statutory notice requirements were met, and in order to develop a record in the event that a party chooses to challenge the adequacy of the notice. Evidence concerning the actual notice that was given is relevant. However, the administrative law judge is limited to making findings and recommendations about whether the requirements of the governing statutes and rules were met, and not the adequacy of those statutes or rules. Any constitutional challenge to the existing statutes and rules must be made on appeal.

Routing.

The Environmental Quality Board has jurisdiction to determine the appropriate route for a high voltage transmission line in the event that the PUC determines one is needed. The specific routing of the transmission line is outside the scope of this proceeding. However, evidence concerning the need for the line in the general area proposed by Xcel is relevant and will be considered. Also, the impact on the environment is weighed in the evaluation of the different transmission line options.

Future Coal-Fired Generation.

Some of the parties are concerned that the proposed transmission line will be used to transmit coal-generated electricity rather than wind-generated electricity. Xcel objects to any evidence about coal generation that is speculative or may be developed at an unspecified date in the future. To the extent that evidence is speculative, it will be excluded. However, to the extent that the parties have evidence about concrete proposals for coal generation, and concrete evidence that coal generation may compete for access to the proposed transmission lines, it may be relevant.

Xcel has represented that the transmission lines are needed to encourage wind development on Buffalo Ridge. If wind-generated electricity may not have access to the proposed lines, that is relevant to the need determination.

Policy Debates About Wind Power.

Xcel is correct that this proceeding is not intended to set policy about the soundness of wind farming. However, the relative merits of large and small wind projects, the density and distribution of wind power, the impact of not building the proposed transmission lines, and the differing transmission needs of various wind developments may be relevant to determining if Xcel's proposed transmission lines are needed. The PUC must determine "that there is no feasible and prudent alternative"^[4] to the proposed lines, and evidence about how wind power is developing may be relevant to determining the need, including size, type and timing, for the transmission lines.

Cost Recovery.

This proceeding will determine the need for the proposed high voltage transmission lines, but it is not the proper proceeding to conduct a review of the actual costs that have been or will be expended by Xcel. There are no actual projects approved or constructed at this time. Apparently there is a separate docket before the PUC to address cost recovery.

Open Access to the Transmission Lines.

Xcel contends that it can not limit the use of transmission lines to wind power because federal law governs access to the lines, and because of its participation in the Midwest Independent System Operator ("MISO"). The Department of Commerce and other parties have raised factual questions about Xcel's position that are appropriately addressed at the hearing. The merits of the legal issues may be addressed in the post-hearing briefs.

Objections May Be Renewed.

As specific evidence is offered, the parties are free to renew their objections. This is a preliminary ruling, addressing proposed limitations without the opportunity to consider the proffered evidence.

B.J.H.

^[1] See Co-op Power Ass'n v. Eaton, 284 N.W.2d 395, 397 (Minn. 1979).

^[2] Minn. R. 7849.0120 B(3); c(2).

^[3] Minn. R. 7849.0120 B (2).

^[4] Minn. Stat. §116D.04, subd. 6; See also Minn. R. 7849.0120 B.